

## THIRD DIVISION

[ G.R. No. 214440, June 15, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX  
MENDEZ RAFOLS, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

For review is the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 01533 dated 27 June 2014, which affirmed the Judgment<sup>[2]</sup> dated 11 July 2012 of the Regional Trial Court (RTC) of Cebu City, Branch 7 in Criminal Case Nos. CBU-81836 and CBU-81837. The RTC convicted Alex Mendez Rafols (appellant) of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with violation of Sections 5 and 11 of Article II of R.A. No. 9165, to wit:

#### CRIMINAL CASE NO. CBU-81836

That on or about the 5<sup>th</sup> day of December 2007, at about 9:15 in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to poseur buyer one (1) small heat sealed plastic pack of white crystalline substance weighing 0.04 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.<sup>[3]</sup>

#### CRIMINAL CASE NO. CBU-81837

That on or about the 5<sup>th</sup> day of December 2007, at about 9:15 in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control six (6) heat sealed transparent plastic sachet[s] of white crystalline substance weighing 0.24 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug, without authority of law.<sup>[4]</sup>

Appellant pleaded not guilty to the offenses charged. Joint trial ensued.

The prosecution built its case on the theory that the drug operatives apprehended appellant during a buy-bust operation. During the buy-bust operation, appellant sold one (1) plastic sachet of *shabu* to the *poseur buyer* while a search on appellant's

person yielded six (6) plastic sachets of *shabu* which the police seized.

Upon receipt of information that appellant is engaged in illegal drug activities in Sito Riverside, *Barangay* Day-as, Cebu City, a buy-bust team was formed headed by Director Levi S. Ortiz (Dir. Ortiz) of the Philippine Drug Enforcement Agency (PDEA) to apprehend appellant on 5 December 2007, pursuant to an Authority to Operate.

[5] IA3 George Cansancio was designated as *poseur buyer*. The buy- bust money was marked with "LSO," the initials of Dir. Ortiz.[6]

The informant and the *poseur buyer* proceeded to the location while the rest of the buy-bust team strategically positioned themselves at the target area. Seeing the *poseur buyer* with the informant, the appellant asked the former if he wanted to buy *shabu*. The *poseur buyer* replied in the affirmative, stated the quantity when asked how much he wanted to purchase, and immediately gave appellant the buy-bust money. Appellant took out from his pocket a silver container out of which he got the plastic sachet containing the white crystalline substance believed to be *shabu*. After the exchange, the poseur buyer executed the pre-arranged signal to another police officer, FO3 Priscillano C. Gingoyon (FO3 Gingoyon), who assisted in the arrest of appellant. Appellant was apprised of his constitutional rights and the violation he had committed. A body search on appellant's person yielded six (6) plastic sachets of white crystalline substance and the buy-bust money. The buy-bust team took appellant and the confiscated items to the PDEA office for investigation. After marking, inventory and photographing of the same were done in the presence of appellant, *barangay tanods* and a media representative, the confiscated items were taken to the Philippine National Police (PNP) Crime Laboratory for analysis and examination.[7] Rendielyn Sahagun (Sahagun), Forensic Chemist of the PNP Crime Laboratory, conducted an examination on the specimens submitted and found them to be positive for the presence of *shabu*. [8]

Appellant testified on his behalf and anchored his defense on denial and frame-up. He denied selling *shabu* and claimed that on the date and time of the incident, he was at his nephew's eatery to ask for money to purchase his mother's medicine. En route to buying medicine, appellant was blocked by two (2) men in civilian clothes. The men grabbed hold of him and brought him to the police station for his supposed participation in a fight between neighbors. There, the police officers allegedly showed him one (1) plastic sachet of *shabu* and a One Hundred Peso (P100.00) bill as buy-bust money. Appellant admitted on the witness stand to having been previously arrested for possession of illegal drugs but claimed that the evidence against him had been planted. And although in the instant case the evidence was allegedly likewise planted, appellant by his own volition opted not to file a case against the police officers who arrested him.[9]

On 11 July 2012, the RTC convicted appellant of all the charges. The RTC relied on the presumption of regularity in the buy-bust operation and the lack of improper motive on the part of the police officers. The RTC rejected the preferred defenses and found that the prosecution sufficiently established all the elements of the crimes charged and the identity of appellant as the perpetrator. The RTC disposed, thus:

WHEREFORE, in view of the foregoing, accused Alex Mcndez Rafols is hereby convicted beyond reasonable doubt of the crimes charged and is

sentenced to suffer the following [penalties]:

1. life imprisonment and a fine of P500,000.00 for violation of Section 5, Article II of RA 9165;
2. twelve (12) years and one (1) day to fifteen (15) years and a fine [of] P300,000.00 for Violation of Section 11, Article II of RA 9165;

The total seven (7) packs of shabu are forfeited in favor of the government.<sup>[10]</sup>

On 27 June 2014, the Court of Appeals rendered the assailed judgment affirming the RTC's decision. The Court of Appeals found appellant guilty of the crimes charged, or violation of Sections 5 and 11, Article II of R.A. No. 9165, disposing as follows:

**WHEREFORE**, the appeal is **DENIED**. The Judgment of the Regional Trial Court, Branch 7, Cebu City dated July 11, 2012 in Criminal Cases (sic) Nos. CBU-81836 and CBU-81837 finding accused-appellant Alex Mendez Rafols guilty beyond reasonable doubt of violating Sections 5 and 11 of Article II of Republic Act (RA) 9165 is hereby **AFFIRMED**.<sup>[11]</sup>

On appeal before this Court, we find no reversible error committed by the RTC and the Court of Appeals in convicting appellant of the crimes charged.

The prosecution was able to establish with moral certainty the following elements required for all prosecutions for illegal sale of dangerous drugs: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.<sup>[12]</sup> Appellant was apprehended, indicted and convicted by way of a buy-bust operation, a form of entrapment to capture lawbreakers in the execution of their criminal plan.<sup>[13]</sup> The commission of the offense of illegal sale of dangerous drugs merely requires the consummation of the selling transaction which happens the moment the buyer receives the drug from the seller. The crime is already consummated once the police officer has gone through the operation as a buyer whose offer was accepted by the accused, followed by the delivery of the dangerous drugs to the former.<sup>[14]</sup>

Appellant was caught delivering one heat sealed plastic sachet containing white crystalline substance to the poseur buyer in exchange for P100.00. The *poseur buyer*, IAS Cansancio, positively identified appellant in open court to be the person who sold to him the item which upon examination was confirmed to be *shabu*. Upon presentation thereof in open court, the poseur buyer duly identified it to be the same object sold to him by appellant.<sup>[15]</sup>

For a successful prosecution for illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug.<sup>[16]</sup> Obtained through a valid search the drug operatives conducted pursuant to